

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5271 of 1997
with
Special Civil Application No.5274 of 1997
with
Special Civil Application No.5275 of 1997
with
Special Civil Application No.5574 of 1997
with
Special Civil Application No.6352 of 1997
with
Special Civil Application No.8580 of 1997

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For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

KHERALU NAGARIK SAHAKARI BANK LTD

Versus

STATE OF GUJARAT

Appearance:

MR K.G. VAKHARIA, Senior Advocate, with Mr.Tushar Mehta and Mr.M.K. Vakharia, Advocate, for Petitioner, in all matters.

Mr.S.N. Shelat, Additional Advocate General, with MR PRASHANT G DESAI, Government Pleader, for

Respondents Nos. 1, 2 and 3, in all matters.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 16/04/98

C.A.V. JUDGEMENT: (Per K. Sreedharan, C.J.)

1. The common question raised in all these Special Civil Applications is relating to Constitutional Validity of Section 71 of the Cooperative Societies Act, Gujarat Act 10 of 1962 (hereinafter referred to as "The Act"). Contention is that Section 71 cannot in any manner control the affairs of a Society, engaged in banking business. Such a Society, after the amendment brought about by the Banking Laws (Application to Cooperative Societies) Act, Central Act 23 of 1965, cannot have any relevance to such activities. On account of the said Central Legislation, the provisions contained in the Act becomes ultra vires the powers of the State Legislature by virtue of provisions contained in Article 245 of the Constitution.

2. Learned counsel appearing in the case, while arguing the entire issue in detail, agreed to have all these petitions disposed of by a common judgment. They further prayed that this Court need not go into various questions of fact raised in these matters, for, they are to be challenged before the Authorities, who issued notices, requiring the Bank and its Officers to show cause why action contemplated by Section 147 of the Act are not to be initiated. On this basis, we refrain from examining the various factual controversies raised by the respective petitioners. We are confining ourselves to the legal question as to whether Section 71 of the Act continues to be in force after the amendment of the Banking Regulation Act, 1949 (hereinafter referred to as "The Banking Regulation Act", as amended by Central Act 23 of 1965, which came into force with effect from 1.3.1966.

3. It is common case of all the parties to these proceedings that concerned District Cooperative Banks are "Cooperative Societies", coming within the definition of that expression under the Act. All these banks are Societies, registered under the Act and are doing business of 'banking', as defined in Section 5 of the Banking Regulation Act. These banks carry out the business of banking by accepting deposits of money from the public for the purpose of lending or for investment.

The money so accepted are repayable on demand or otherwise, withdrawable by cheque, draft, order or otherwise. Consequently, it is contended that these Societies are Banking Companies. As such, they come under the purview of Banking Regulation Act, which is a Central Enactment. Provisions contained in the Gujarat Act can, under no circumstance, control the banking activities of these Cooperative Banks. Any provision for controlling the affairs of these banks in the Act will be beyond the Legislative competence of the Gujarat Legislative Assembly. Entries 43, 44 and 45 in List I of Seventh Schedule authorises the Central Government and the Central Government alone to legislate on Banking and Banking Corporations. Invoking the power under those Entries, Central Government enacted Banking Regulation Act, as amended by Act 23 of 1965. By that Amending Act, Cooperative Banks have been brought under the Banking Regulation Act. Cooperative Societies Act of Gujarat has been enacted, invoking the powers under Entry 32 of List II of the Seventh Schedule. The said enactment can, under no circumstance, enable the State Government or its Officers to impose any restriction in the activities of the Bank.

4. Argument advanced by learned counsel representing the petitioners is that matters regarding incorporation, regulation and winding up of Banking Societies, even if registered under the Cooperative Societies Act would fall within Entry 43 of List I of the Seventh Schedule. Entry 45, being one taking within its ambit anything and everything connected with Banking, should cover the banking activities of Cooperative Societies as well. Therefore, any society, even if it is registered under the Act, can be controlled by Central Legislation, coming under Entry 43 or Entry 45 of List I. Entry 32 in List II, though empowers the State Legislature to make laws with respect to the Cooperative Societies, cannot be taken as an authorisation to legislate on Cooperative Societies dealing in banking business. Contention is that if a particular subject falls under List I in the Seventh Schedule, then the Parliament has the exclusive power to legislate on that subject and consequently, the State is deprived of any power to make law in respect of that matter.

5. It is settled law that various Entries in the various Lists in the Seventh Schedule must be given widest possible interpretation. It is also settled position that if some of the Entries in the different Lists overlap or appear to be in direct conflict, it is the duty of the Court to reconcile the Entries and bring

about a harmonious construction. A Cooperative Society, carrying on banking business, may appear to be a Corporation concerned with the business of banking. Thus, it may appear to be falling within the ambit of Entry 43 of List I. So also, since it is carrying on the business of banking, it may appear to be coming within the scope of Entry 45 of List I. To have a harmonious construction of Entries Nos. 43 and 45, it is to be understood that only business of banking, pure and simple, falls within the purview of Entry 45, while incorporation of a Trading Corporation, engaged in banking, must fall within the ambit of Entry 43. In this view, to have a harmonious understanding, Cooperative Banks may fall within Entry 43 and not under Entry 45 of List I. But List 43 specifically excludes Cooperative Societies from its purview. When such a specific exclusio..

Entry 43, Cooperative Societies, engaged in Banking, should be taken out of the purview of Entry 43 as well. Cooperative Societies have been brought under Entry 32 of List II. The State Legislature has thereby power to legislate on all matters concerning Cooperative Societies. Such Cooperative Societies falling under Entry 32 of List II may even be engaged in the business of Banking. This and this alone can be the harmonious interpretation of the various Entries in Lists I and II mentioned above.

6. In *Virendra Pal Singh and others v. District Assistant Registrar*, (1980) 4 SCC 109, the Apex Court, dealing with an identical issue, observed :-

"... Merely because they do banking business such cooperative societies do not cease to be cooperative societies, when otherwise they are registered under the Cooperative Societies Act and are subject to the duties, liabilities and control of the provisions of the Cooperative Societies Act...."

In the instant cases, all these Societies were registered under the Cooperative Societies Act. They are falling under the category of Central Cooperative Banks. Such a bank, as per the Act, is registered with the primary object of creating funds to be loaned to other Societies. The District Cooperative Bank has, thus, the primary object of financing other Societies in that District. Section 71 of the Act enumerates the various institutions in which a Cooperative Bank is to make investments.

Clause (g) of Section 71(1) enables the State Government to permit any society to invest the funds in any institution other than those mentioned in clauses (a) to (f) of this sub-section. Petitioners sought the permission of the State Government to invest funds in an institution outside those falling under clauses (a) to (f). Government did not accord permission to make such investment. In spite of this, they invested the funds in another Mutual Fund. That investment, according to the Bank, was for getting more returns. On account of the liquidation of the Mutual Fund, in which the investment has been made, notices have been issued to the Bank, calling for explanation as to why action should not be initiated, as contemplated by Section 148 of the Act. Petitioners have not filed their replies to those notices. In such a situation, any observation made by us on this issue may prejudice one side or the other in the proceedings that follow the show cause notice. So, counsel appearing on either side rightly requested us not to dwell into that aspect of the matter in the judgment. Accordingly, we refrain from expressing our views on the justifiability or otherwise of the action taken by the Bank and its Office Bearers in depositing funds in the Mutual Fund.

7. In view of what has been stated above and in the light of the decision of the Apex Court, referred to earlier, we hold that the provisions of the Act control the affairs of the petitioners herein and actions initiated under that Act are legal and sustainable. We do not find any reason to interfere with the action taken under the Act. Petitioners, if they are so advised, have to face the proceedings in accordance with law. The petitioners are not entitled to any of the reliefs asked for in these petitions. They are accordingly dismissed. Rule is discharged. Ad interim relief is vacated.

(apj)